

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Dakota

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

See attached sheets.

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CHAPTER 23-06.4
UNIFORM RIGHTS OF TERMINALLY ILL ACT

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23-06.4-01. Legislative intent. Every competent adult has the right and the responsibility to control the decisions relating to the adult's own medical care, including the decision to have medical or surgical means or procedures calculated to prolong the adult's life provided, withheld, or withdrawn. Communication about such matters is encouraged between each person and the person's family, the physician, and other health care providers. This chapter does not condone, authorize, approve, or permit mercy killing, euthanasia, or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

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23-06.4-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.
2. "Declaration" means a writing executed in accordance with the requirements of subsection 1 of section 23-06.4-03.
3. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.
4. "Life-prolonging treatment" means any medical procedure, treatment, or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying and where, in the judgment of the attending physician, death will occur whether or not the treatment is utilized. The term does not include the provision of appropriate nutrition and hydration or the performance of any medical procedure necessary to provide comfort care or alleviate pain; or medical procedures, treatment, or intervention performed in an emergency, prehospital situation.
5. "Physician" means an individual licensed to practice medicine in this state pursuant to chapter 43-17.
6. "Qualified patient" means a patient eighteen or more years of age who has executed a declaration and who has been determined by the attending physician and another physician who has personally examined the patient to be in a terminal condition.
7. "Terminal condition" means an incurable or irreversible condition that, without the administration of life-prolonging treatment, will result, in the opinion of the attending physician, in imminent death. The term does not include any form of senility, Alzheimer's disease, mental retardation, mental illness, or chronic mental or physical impairment, including comatose conditions that will not result in imminent death.

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23-06.4-03. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:
 - a. Related to the declarant by blood or marriage;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will, existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;
 - d. Directly financially responsible for the declarant's medical care;
 - e. Attending physicians of the declarant.
2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located.
3. A declaration must be substantially in the form set forth in subdivision a or b, as applicable, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.
 - a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:

Declaration made this ____ day of ____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.

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3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
4. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
5. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____

Witness _____

- b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:

Declaration made this _____ day of _____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.
3. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
4. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any

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portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____

Witness _____

4. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

23-06.4-04. When declaration operative. A declaration becomes operative when it is communicated to the attending physician, and the declarant is determined by the attending physician and another physician to be in a terminal condition and no longer able to make decisions regarding administration of life-prolonging treatment. A declaration made under section 23-06.4-03 does not obligate the physician to use, withhold, or withdraw life-prolonging treatment but is presumptive evidence of the declarant's desires concerning the use, withholding, or withdrawal of such treatment and must be given great weight by the physician in determining the intent of the incompetent declarant. A declaration made under section 23-06.4-03 does not apply to emergency treatment performed in a prehospital situation.

23-06.4-05. Revocation of declaration.

1. A declaration may be revoked at any time and in any manner by the declarant, provided the declarant is competent, including by:
 - a. A signed, dated writing;
 - b. Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction; or
 - c. An oral expression of intent to revoke.
2. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

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3. The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

23-06.4-06. Recording determination of terminal condition and declaration. Upon determining that the declarant is in a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

23-06.4-07. Management of qualified patients.

1. A qualified patient may make decisions regarding life-prolonging treatment as long as the patient is competent.
2. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.
3. This chapter does not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration. Nutrition and hydration may be withheld from a patient with a terminal condition if the nutrition and hydration could not be physically assimilated by the patient or would be physically harmful or unreasonably painful to the patient.
4. Notwithstanding a declaration executed under this chapter, medical treatment must be provided to a pregnant patient with a terminal condition unless, to a reasonable degree of medical certainty as certified on the patient's medical chart by the attending physician and an obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or will prolong severe pain that cannot be alleviated by medication.

23-06.4-08. Transfer of patients. An attending physician or other health care provider who is unwilling to comply with this chapter shall take, as promptly as practicable, all reasonable steps to transfer care of the declarant to another physician or health care provider who is willing to comply with this chapter.

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23-06.4-09. Immunities.

1. In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the declaration pursuant to the requirements of this chapter.
2. A physician or other health care provider, whose actions are authorized by this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to those actions unless done in a grossly negligent manner.

23-06.4-10. Penalties.

1. An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a class A misdemeanor.
2. An individual who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in section 23-06.4-05, is guilty of a class C felony.
3. A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a class A misdemeanor.
4. A person who coerces or fraudulently induces another to execute a declaration under this chapter is guilty of a class C felony.
5. The sanctions provided in this section do not displace any sanction applicable under other law.

23-06.4-11. Miscellaneous provisions.

1. Death resulting from the withholding or withdrawal of life-prolonging treatment pursuant to a declaration and in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.
2. The making of a declaration under section 23-06.4-03 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging treatment from an insured qualified patient, notwithstanding any term to the contrary.
3. A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.

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4. This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-prolonging treatment in the event of a terminal condition.
5. This chapter does not affect the right of a patient to make decisions regarding use of life-prolonging treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of medical care.
6. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
7. Declarations made under section 23-06.4-03 do not apply to emergency treatment performed in a prehospital situation.

23-06.4-12. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with this chapter and is valid.

23-06.4-13. Recognition of declaration executed in another state. A declaration executed in another state by a resident of that state in compliance with the law of that state or of this state is validly executed for purposes of this chapter.

23-06.4-14. Effect of previous declaration. An instrument executed before July 10, 1989, which basically complies with the intent of subsection 1 of section 23-06.4-03, must be given effect pursuant to this chapter. A previously executed instrument that purports to comply with the intent of this chapter is valid for five years from July 10, 1989, unless the declarant becomes incompetent within five years after the execution of the declaration and remains incompetent at the time of the determination of a terminal condition under section 23-06.4-04, in which case the declaration continues in effect. When the declaration expires, a new declaration must be executed if the declarant wishes to make a written declaration under this chapter.

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CHAPTER 23-06.5

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Section	Section
23-06.5-01. Statement of purpose.	23-06.5-10. Freedom from influence.
23-06.5-02. Definitions.	23-06.5-11. Reciprocity.
23-06.5-03. Scope and duration of authority.	23-06.5-12. Immunity.
23-06.5-04. Restrictions on who can act as agent.	23-06.5-13. Guardianship authority — Conflicting declaration.
23-06.5-05. Execution and witnesses.	23-06.5-14. Liability for health care costs.
23-06.5-06. Acceptance of appointment — Withdrawal.	23-06.5-15. Validity of previously executed durable powers of attorney.
23-06.5-07. Revocation.	23-06.5-16. Use of statutory form.
23-06.5-08. Inspection and disclosure of medical information.	23-06.5-17. Statutory form of durable power of attorney.
23-06.5-09. Action by provider.	23-06.5-18. Penalties.

23-06.5-01. Statement of purpose. The purpose of this chapter is to enable adults to retain control over their own medical care during periods of incapacity through the prior designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

23-06.5-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.
2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.
4. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter.
5. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

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